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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/475,765	12/30/1999	ERIC HAMER	KEYNP005	6830

26541 7590 10/23/2002

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EXAMINER

NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/475,765

Applicant(s)

HAMER ET AL.

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-3,5-8,9-20,22-27,29-33, and 35-37 rejected under 35 U.S.C. 102(e) as being anticipated by Landan U.S. Patent 6,449,739.

3. Referring to claims 1, and 20, Landan reference discloses connecting a data acquisition agent to the network (Fig. 1); sending a request for information from the data acquisition agent to the information source (col. 15, lines 51-55); loading data responsive to the request for information onto the data acquisition agent (col. 5, last paragraph through col. 6, lines 5); executing the transaction (col. 15, lines 50-51); collecting performance measurements for the transaction (col. 7, lines 47-50); and sending the performance measurements to a storage device (col. 8, lines 21-26).

4. Referring to claims 2, and 22, Landan reference discloses the transaction comprises simulating a transaction previously recorded between a user machine and the information source (col. 10, last paragraph) or (Fig. 4).
5. Referring to claim 3, Landan reference discloses collecting performance measurement comprises collecting download time of the data in response to the request for information (col. 15, lines 60-64).
6. Referring to claims 5, and 26, Landan reference discloses collecting performance measurements comprises identifying errors occurring during the transaction (col. 17, lines 3-12).
7. Referring to claim 6, Landan reference discloses the network is the Internet (col. 7, lines 3-12).
8. Referring to claims 7, and 32, Landan reference discloses the information source is a web server and the request for information comprises requesting a web page (col. 9, lines 29-32).
9. Referring to claims 8, 27, and 33, Landan reference discloses collecting performance measurements comprises collecting download time for each web page downloaded during the transaction (col. 17, lines 3-12).
10. Referring to claims 10, and 37, Landan reference discloses connecting a data acquisition agent to the network comprises connecting a plurality of data acquisition agents to the network at a plurality of locations (col. 5, lines 40-44).
11. Referring to claim 11, Landan reference discloses comprising displaying the performance measurements on a web site (col. 8, lines 27-29).

12. Referring to claims 12, and 35, Landan reference discloses executing the transaction comprises sending a query from the data acquisition agent to the information source after the data is loaded (Fig. 1).

13. Referring to claims 13, and 36, Landan reference discloses executing the transaction comprises submitting an order from the data acquisition agent to the information source after the data is loaded (col. 10, last paragraph).

14. Referring to claims 14-19, Landan reference discloses executing the transaction comprises updating state information to link web pages together within a transaction; and updating state information comprises searching for a session ID, text, frame, URL, and HTML text (col. 15, last paragraph through col. 16, lines 10), and also it is obvious or inherent to for searching for a session ID, text, frame, URL, and HTML text when executing a transaction over the web.

15. Referring to claim 23, Landan reference discloses the data acquisition agent is configured to receive said recorded transaction over the network (col. 7, lines 14-16).

16. Referring to claim 24, Landan reference discloses the data acquisition agent is configured to receive instructions specifying a plurality of said recorded transactions to execute (Fig. 4).

17. Referring to claim 25, Landan reference discloses the data acquisition agent is configured to repeat execution of said specified transactions until new instructions are received (Fig. 9).

18. Referring claim 29, Landan reference discloses a monitoring device for recording when the agent last executed the transaction (col. 12, 4th paragraph).

19. Referring to claim 30, Landan reference discloses the agent is operable to store the collected performance measurements (col. 17, 2nd paragraph).

20. Referring to claim 31, Landan reference discloses starting a recorder (col. 9, line 41); sending a request for information from a computer to an information source over the network to begin the transaction (col. 15, lines 51-55); loading a page responsive to the request for information onto the computer (col. 9, 4th paragraph); entering data on the page and sending the data to the information source (col. 9, 4th paragraph); completing the transaction (col. 9, lines 41-45); stopping the recorder (col. 9, line 43); and sending the recording of the transaction to a data acquisition agent on the network, the data acquisition agent being operable to play the recording and execute the transaction with the information source and collect performance measurements for the transaction (col. 9, lines 43-45).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Landan in view of Killian U.S. Patent 6,438,592.

Landan reference discloses collecting performance measurements for the transaction (col. 7, lines 47-50); however, Landan fails to teach us that the collecting performance measurements comprises collecting number of bytes downloaded for the transaction.

Killian reference discloses collecting performance measurements comprises collecting number of bytes downloaded for the transaction (col. 2, lines 10-19).

It would have been obvious to one of the ordinary skill in the art at the time of the

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invention was made to incorporate Killian's teaching into Landan's method to collect number of bytes that has been processed per transaction; because we can use this information to measure the performance or traffic of the server at a particular time. So we can use this information to resolve the problem quicker if the problem is existed.

23. Claims 9,21,28, and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Landan in view of Barrick, Jr. et al. U.S. Patent 6,006,260.

24. Referring to claims 9,28, and 34, Landan reference discloses collecting performance measurements comprises collecting download time for each web page downloaded during the transaction (col. 17, lines 3-12); however, Landan fails to teach us that the collecting performance measurements comprises collecting download time for individual components within each of the web pages.

Barrick reference discloses collecting performance measurements comprises collecting download time for individual components within each of the web pages (col. 8, lines 27-46).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Barrick's teaching into Landan's method to collect the download time for individual components within each of the web pages; because we need to know what the response would be like so if there is a problem is occur at a certain components of the web page we can view to that specific component directly. As a result of this, we will save a lot of time rather than check entire web page for error.

25. Referring to claim 21, Landan reference discloses connecting a data acquisition agent to the network (Fig. 1); sending a request for information from the data acquisition agent to the information source (col. 15, lines 51-55); loading data responsive to the request for information

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onto the data acquisition agent (col. 5, last paragraph through col. 6, lines 5); however, Landan fails to teach us that the data acquisition agent includes a browser embedded within the agent.

Barrick reference discloses the data acquisition agent includes a browser embedded within the agent (col. 4, lines 40-43).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Barrick's teaching into Landan's method to embedded the browser to the agent, because we can view the performance of the server faster.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Abbott et al. U.S. Patent 6,314,463 discloses method and system for measuring queue length and delay

Dilip el al. U.S. Patent 6,094,673 discloses method and apparatus for generating agent scripts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 703-305-5315. The examiner can normally be reached on Mon -Thu (7AM-4:30PM) and off every other Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-9238 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Phuoc H. Nguyen
Examiner
Art Unit 2143

October 4, 2002



DAVID WILEY
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